



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



June 28, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Armand Mastropietro d/b/a
College Road Auto & Truck
31 Route 108
Newfields, NH 03856

Re: Administrative Order No. WMD 02-16

Dear Mr. Mastropietro,

Enclosed is Administrative Order No. WMD 02-16 issued this date to you as a result of a non-notifier inspection conducted on April 17, 2001, and May 10, 2001.

Should you have any questions regarding this order, please contact Cheryl McGary or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator
Waste Management Programs
Department of Environmental Services

CERTIFIED MAIL/RR: 7000 1670 0000 0584 4240

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Newfields, NH
Rockingham Country Registry of Deeds



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**ADMINISTRATIVE ORDER
No. WMD 02-16**

June 28, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Armand Mastropietro d/b/a College Road Auto & Truck pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Armand Mastropietro is an individual doing business as College Road Auto & Truck ("College Auto") having a mailing address of 31 Route 108, Newfields, NH 03856.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100-300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Armand Mastropietro is the owner of land at 31 Route 108, Newfields, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 2890, Page 1779, and identified on Newfields Tax Map 202, as Lots 11 and 12 ("Site").
4. On April 17, 2001 and May 10, 2001, DES personnel conducted a non-notifier inspection of the Site ("Non-notifier Inspection"). The purpose of the Inspection was to determine College Auto's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.
5. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

6. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed of wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

7. During the Non-notifier Inspection, DES personnel observed the following at the Site.

- a. Approximately 400 scrap tires;
- b. Several 5-gallon pails containing cement dogs (used in construction);
- c. Approximately one dozen automobile batteries; and
- c. A pile of aluminum cans partially covered by a tarp.

8. The tires, batteries, cement dogs, and aluminum cans observed by DES at the Site are solid waste as defined by RSA 149-M:4, XXII.

9. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."

10. A review of DES files shows that the Site is not approved to accept solid waste.

11. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste with the hazardous waste number of NH01.

12. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

13. RSA 147-A:2, IV defines "[hazardous waste] facility" as "a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste is generated."

14. During the Non-Notifier Inspection, DES staff observed the following at the Site

- a. One unlabeled 55-gallon drum of used oil;
- b. Numerous paint containers, with contents, ranging in size from one pint to one quart; and
- c. Several areas of stained soil.

15. College Auto is a generator of hazardous waste as defined by RSA 147-A:2, VI

16. The Site is a hazardous waste facility as defined by RSA 147-A:2, IV.

17. As a result of the Non-Notifier Inspection, DES issued a Report of Initial Complaint Investigation ("RICI") dated May 10, 2001, to College Auto advising it to label and seal all used oil containers; manage scrap tires in accordance with the Solid Waste Rules; dispose/recycle aluminum cans at a permitted solid waste facility; and identify the contents of all containers and

manage the contents according to the Hazardous Waste Rules and/or Solid Waste Rules as appropriate.

18. On June 21, 2001, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel observed that the 5-gallon pails of cement dogs had been removed. No other changes were noted at the Site since the Non-Notifier Inspection.

19. On July 26, 2001, DES personnel conducted a follow-up inspection of the Site. No changes were observed at the Site since the June 21 inspection.

20. On August 25, 2001, DES personnel responded to a hazardous materials incident at the Site. The Newfields Fire Department had responded to a brush fire which spread to the Site. The brush fire ignited the paint cans observed during the Non-Notifier Inspection. The fire department stated that they heard "popping" sounds from the paint cans.

21. The Newfields Fire Chief informed DES personnel that based on the burn characteristics and the odor of solvents present, he suspected that the contents (paint) of the paint cans were not latex paints.

22. During the August 25 inspection, DES personnel observed approximately 100-150 pint and quart sized containers in an area approximately 25 square feet. Several of the containers had spilled out their contents and the labels had been burned off.

23. DES personnel used a photoionization detector to screen the area directly above the paint cans. The paint cans were emitting vapors that were detected by the photoionization detector at 60 units above the background reading of the unit. A photoionization detector is a field instrument which detects volatile organic compounds ("VOC's"), many of which are identified as hazardous wastes under the Hazardous Waste Rules. Elevated photoionization detector readings indicate that the paints contain VOC's in an unknown quantity, which are potential hazardous wastes.

24. On August 27, 2001, during a telephone conversation with DES personnel, Mr. Mastropietro informed DES that he had begun to clean-up the Site and had sealed the drum of used oil.

25. On August 28, 2001, DES personnel conducted a follow-up inspection of the Site. DES personnel observed approximately 100 paint cans. One of the labels identified the paint as containing methyl ethyl ketone, isopropyl alcohol, and acetone. DES personnel informed Mr. Mastropietro that the paints would most likely be hazardous wastes. DES personnel also informed Mr. Mastropietro that the empty paint cans could be disposed as a solid waste. The tires observed during the Non-notifier inspection remained at the Site. Mr. Mastropietro informed DES personnel that he had given some of the aluminum cans to a homeless person to cash in. DES personnel observed that the used oil drum had been sealed, however it was not labeled. DES personnel reviewed the requirements of the Hazardous Waste Rules and the Solid Waste Rules with Mr. Mastropietro.

26. On September 5, 2001, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel observed that the empty paint cans had been placed into trash bags and that the paint cans with contents had been removed. DES personnel used a photoionization detector to field screen the area of paint-stained soil. The paint-stained soils were emitting vapors that were detected by the photoionization detector at approximately 10 units above the background reading of the unit. DES personnel advised Gayland, a friend of Mr. Mastropietro, that the paint-stained soils would need to be containerized and properly disposed.

27. On September 20, 2001, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel observed that the paint stained soils had been dug up and placed in plastic bags. Gayland informed DES personnel that the stained soils were going to be transferred to a rigid container.

28. On September 26, 2001, DES personnel conducted a follow-up inspection of the Site. DES personnel used a photoionization detector to field screen the area where the paint-stained soil had previously been. Photoionization readings of zero above background were obtained. Mr. Mastropietro informed DES personnel that the paint cans not consumed in the fire were placed into a partially burned storage trailer at the Site. Mr. Mastropietro stated he would be reusing the paint involved in the fire. DES personnel verbally advised Mr. Mastropietro to perform the following within the next six weeks:

- a. Dispose of all the empty paint cans;
- b. Dispose of the paint contaminated soil;
- c. Dispose of scrap tires;
- d. Dispose of aluminum cans; and
- e. Seal and label all used oil containers.

29. On October 24, 2001, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. No changes were observed at the Site since the September 26 inspection.

30. On December 5, 2001, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. No changes were observed at the Site since the October 24 inspection.

31. On January 2, 2002, DES personnel conducted a follow-up inspection of the Site. DES observed or learned the following:

- a. The used oil drum was sealed and labeled;
- b. Aluminum cans had been disposed;
- c. Empty paint cans have been removed and disposed; and
- d. The scrap tires remain at the Site.

32. On January 9, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. No changes were observed at the Site since the January 2 inspection.

33. On February 5, 2002, DES personnel conducted a follow-up inspection of the Site. DES personnel observed approximately 200 scrap tires and empty gas tanks. Mr. Mastropietro was again told to remove all scrap tires and empty gas tanks to a permitted facility and obtain disposal receipts.

34. On March 8, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel noted that the empty gas tanks had been removed and that some of the scrap tires had been loaded into a pick-up truck at the Site.

35. On March 21, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. No changes were observed at the Site since the March 8 inspection.

36. Env-Wm 502.01 requires that all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.

37. On April 10, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel observed the following:

- a. Approximately 200 scrap tires remain at the Site;
- b. Two 35-gallon drums, one of which was empty, the other drum was not accessible;
- c. Household garbage and empty cat food cans;
- d. One 55-gallon drum which was not accessible;
- e. A pile of clothes, furniture, plastic, and metal; and
- f. A six wheel dump truck which contained wheel rims.

38. As of the date of this order, Mr. Mastropietro has not yet determined the contents of the drums identified in paragraph C.37.

39. On April 12, 2002, DES personnel contacted Mr. Mastropietro via telephone to discuss the clean-up of the Site. Mr. Mastropietro was informed that the following actions needed to be taken at the Site:

- a. Scrap tires needed to be removed to a permitted facility;
- b. The wheel rims needed to be removed to a permitted facility;
- c. The cat food cans and household trash needed to be removed to a permitted facility;
- d. The contents of the containers identified in item C.37 needed to be identified; and
- e. Provide disposal receipts to DES.

40. On April 17, 2002, DES personnel conducted a follow-up inspection of the Site. Mr. Mastropietro was not present during the Site inspection. DES personnel observed that the cat food cans and household trash had been collected and placed into a trash bag. No other changes were observed at the Site since the April 10 inspection.

D. DETERMINATION OF VIOLATIONS

1. Armand Mastropietro d/b/a College Road Auto & Truck has violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.
2. Armand Mastropietro d/b/a College Road Auto & Truck has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on containers with unknown contents.

E. ORDER

Based on the above findings, DES hereby orders Armand Mastropietro d/b/a College Road Auto & Truck as follows:

Immediately cease accepting or bringing any solid waste to the Site

2. **Within 60 days** remove all solid waste at the Site to a permitted solid waste facility.
3. **Within 30 days** conduct a hazardous waste determination as specified in Env-Wm 502.01 on all containers with unknown contents. Submit the results together with any other supporting data, material safety data sheets, chemical analyses, or process knowledge to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled pursuant to the Hazardous Waste Rules.
4. **Within 30 days of receiving hazardous waste determination results**, remove all hazardous waste/used oil at the Site to a facility or facilities permitted to accept such wastes in accordance with the Hazardous Waste Rules.
5. Submit one written status report to DES **within 7 calendar days** of the completion of the remedial actions certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts**.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Armand Mastropietro d/b/a College Road Auto & Truck of his obligation to comply with the Order.

G. OTHER PROVISIONS

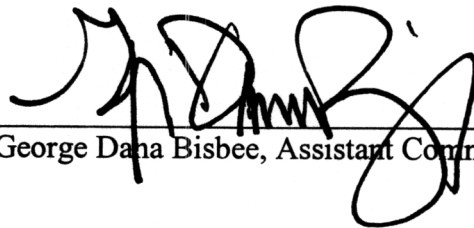
Please note that RSA 147-A and RSA 149-M provide for civil and criminal penalties and administrative fines for violations of the statutes or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:14 and RSA 149-M:15 provide for civil forfeitures of up to \$50,000 and \$25,000, respectively, for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further enforcement action against Armand Mastropietro d/b/a College Road Auto & Truck by referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

Armand Mastropietro d/b/a College Road Auto & Truck remains obligated to comply with all applicable requirements, in particular the Hazardous Waste Rules and the Solid Waste Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Philip J. O'Brien, Ph.D., Director
Waste Management Division



George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7000 1670 0000 0584 4240

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Newfields, NH
Rockingham County Registry of Deeds